

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON

UNITED STATES OF AMERICA,

Plaintiff,

Case No. 3:19-cr-165-MJN-1

vs.

ANTHONY FRANKLIN,

District Judge Michael J. Newman

Defendant.

**ORDER AND ENTRY: (1) SUSTAINING DEFENDANT ANTHONY FRANKLIN'S
OBJECTION TO THE PSR; AND (2) ORDERING THE PROBATION DEPARTMENT
TO SUBMIT AN ADDENDUM TO THE PSR WITH A NEW SENTENCING
GUIDELINES CALCULATION AND SENTENCING RANGE**

This criminal case is before the Court following an evidentiary hearing held on Defendant Anthony Franklin's ("Franklin") objection to the Probation Department's calculation of his total criminal offense level under the United States Sentencing Guidelines ("U.S.S.G.") in the Presentence Investigation Report ("PSR"). Specifically, Franklin contends that U.S.S.G. § 2D1.1(b)(12), which increases a defendant's offense level by two for maintaining a premises for the purpose of manufacturing or distributing a controlled substance, does not apply in this case. *See* Doc. No. 104 at PageID 596. At the evidentiary hearing, the Government conceded that the § 2D1.1(b)(12) enhancement is inapplicable.

The Government bears the burden of proving by a preponderance of the evidence that a criminal defendant "maintained" the premises for § 2D1.1(b)(12) to apply. *See United States v. Hubbard*, 843 F. App'x 667, 674 (6th Cir. 2019) (citing *United States v. Wright*, 747 F.3d 399, 412 (6th Cir. 2014)); *United States v. Earnest*, --- F. Supp. 3d ---, 2022 WL 609592, at *3 (S.D. Ohio Mar. 1, 2022). After taking this matter into consideration and independently considering the

matter—as well as the arguments from both parties—the Court agrees with counsel from both sides and finds that the Government has not met its burden. Accordingly, Defendant’s objection to the PSR is **SUSTAINED**. Thus, the Court finds that Defendant’s current guidelines calculation was in error. The Court **ORDERS** the Probation Department to submit an addendum to the PSR with a new guidelines calculation and sentencing recommendation **within 14 days of this order**.

IT IS SO ORDERED.

July 19, 2022

/s Michael J. Newman

Hon. Michael J. Newman
United States District Judge